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Mailed: November 10, 2004

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Hirschmann Electronics GmbH & Co., KG

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Serial No. 76331276

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Herbert Dubno of The Firm of Karl F. Ross P.C. for  
Hirschmann Electronics GmbH & Co., KG.

Tina L. Snapp, Trademark Examining Attorney, Law Office 116  
(Meryl Herskowitz, Managing Attorney).

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Before Quinn, Chapman and Bottorff, Administrative  
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

Hirschmann Electronics GmbH & Co., KG (a German  
limited partnership) filed an application on October 30,  
2001, to register on the Principal Register the mark  
HIVISION for services ultimately amended to read: "network  
management, namely, installation and maintenance of network  
systems" in International Class 37, and "administration of  
network systems, namely, the integration of computer  
systems and telecommunications and data networks;

telecommunications and network design for others and computer software development for telecommunications and data networks; monitoring the telecommunications or data systems of others for technical purposes, namely, for error detection and removal; and providing back-up computer programs and facilities in the field of telecommunications; and monitoring of telecommunications and data systems for security purposes" in International Class 42.<sup>1</sup> The application is based on applicant's claim of priority under Section 44(d) and on Section 44(e) of the Trademark Act through its German Registration No. 301 33 369, as well as applicant's assertion of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act.

Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used in connection with its identified services, so resembles the registered mark HIVISION for "computer display monitors" in International Class 9,<sup>2</sup> as to be likely to cause confusion, mistake or deception.

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<sup>1</sup> Applicant originally also included goods in International Class 9, but applicant specifically abandoned the application as to the International Class 9 goods in its brief filed November 4, 2003, via certificate of mailing (p. 2). (See also, p. 1 of applicant's supplemental brief, filed May 21, 2004, via certificate of mailing.)

<sup>2</sup> Registration No. 2477991, issued August 14, 2001.

When the refusal was made final, applicant appealed. Briefs have been filed, but applicant did not request an oral hearing.

We reverse the refusal to register. In reaching this conclusion, we have followed the guidance of the Court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

The Examining Attorney contends that the marks are identical; and that the registrant's goods and applicant's services are closely related because applicant's installation, maintenance and various administration of network systems services all pertain directly to computer hardware and registrant's goods are computer hardware; that these goods and services could travel through or be offered through the same channels of trade "and within the natural

field of expansion of each other" (brief, p. 9); and that doubt is resolved in the registrant's favor.

The Examining Attorney submitted (i) printouts of several third-party registrations and (ii) printouts from a few third-party Internet websites, all to show that "there are a number of entities using a single mark on [and in connection with] both computer monitors and network installation services ... as well as networking services." ("Final Office Action Maintained," March 19, 2004, p. 2.)

Applicant acknowledges that its network management services and the various administration of network systems services utilize computers, and that "in this modern world, computer display monitors and networks are ubiquitous" (reply brief, p. 2). However, applicant argues that under an evaluation of the question of likelihood of confusion, the Examining Attorney has not shown (with the exception of huge companies such as IBM and Hewlett Packard) that the same entities regularly offer computer display monitors as well as network installation, maintenance and various administration services under the same mark; that there is insufficient evidence to establish registrant's goods and applicant's services are related within the meaning of the Trademark Act; and that the purchasers of registrant's

goods and applicant's services are not likely to believe the source of one is the source of the other.

The marks are identical. However, we note that the term HIVISION in relation to registrant's computer display monitors connotes or suggests the clarity of the monitor, or ease of seeing material on the monitor; whereas in relation to applicant's services involving installation, maintenance and various administration of network systems (including integrating, monitoring and providing back-up), the term HIVISION would not necessarily connote or suggest the same thing.

We turn to a consideration of the involved goods and services. Applicant's identified services are "network management, namely, installation and maintenance of network systems," and "administration of network systems, namely, the integration of computer systems and telecommunications and data networks; telecommunications and network design for others and computer software development for telecommunications and data networks; monitoring the telecommunications or data systems of others for technical purposes, namely, for error detection and removal; and providing back-up computer programs and facilities in the field of telecommunications; and monitoring of telecommunications and data systems for security purposes."

The registrant's goods are "computer display monitors," which are unquestionably considered computer hardware. While the Examining Attorney has submitted printouts of several third-party registrations to show the relatedness of the involved goods and services, some of the third-party registrations are based not on use, but on Section 44 of the Trademark Act, and thus are not necessarily in use and before the purchasing public; some others (issued to Lucent Technologies Inc.) include the services of management and maintenance of telecommunications systems and telecommunications networks as well as "display monitors," but these display monitors are actually identified as "video teleconferencing products, namely, video transmitters and receivers, video display monitors, video cameras, loud speakers, microphones, keypads, coders, decoders, multipoint controllers, computer programs for operating the videoconferencing equipment" (e.g., Registration Nos. 2419358 and 2565448); and some others include only goods and do not include services (e.g., Registration Nos. 2333896 and 2598648).

While the Examining Attorney contends that there is a direct and close relationship between computer display monitors and applicant's network installation, management and various administration services such that consumers

might expect the same source of origin thereof, there is very little evidence of any such understanding by consumers as between computer display monitors, on the one hand, and applicant's particular network services, on the other. The printouts from the IBM and Hewlett Packard websites certainly indicate that those two large computer companies offer both computer hardware (including monitors) and various network services, and a very few of the third-party registrations (based on use in commerce) indicate that one entity has registered a single mark for both computer hardware and various computer services.<sup>3</sup>

However, inasmuch as computers are ubiquitous in virtually all fields of commerce and business, the mere fact that applicant's network installation, maintenance and various administration services may in some manner involve or utilize computers and thus computer display monitors, does not make them related such that consumers would

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<sup>3</sup> Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the extent that they may serve to suggest that such goods and services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); and *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988). We have considered only those third-party registrations that are active and are based on use in commerce and include both computer monitors and network services.

believe they emanate from the same source. See Electronic Data Systems Corp. v. EDSA Micro Corp., 23 USPQ2d 1460, 1463 (TTAB 1992); and Reynolds & Reynolds Co. v. I.E. Systems Inc., 5 USPQ2d 1749, 1751 (TTAB 1985).

Simply put, we cannot conclude from the evidentiary record furnished by the Examining Attorney that "computer display monitors" vis-a-vis "network management, namely, installation and maintenance of network systems," and "administration of network systems, namely, the integration of computer systems and telecommunications and data networks; telecommunications and network design for others and computer software development for telecommunications and data networks; monitoring the telecommunications or data systems of others for technical purposes, namely, for error detection and removal; and providing back-up computer programs and facilities in the field of telecommunications; and monitoring of telecommunications and data systems for security purposes" emanate from a single source, such that the consumers of these goods and services would assume a common source.

As a result, even though the involved marks are identical (in all but connotation), this ex parte record does not support a finding that the contemporaneous use of the mark HIVISION by applicant for its network systems

services and registrant's use of the same mark for computer display monitors is likely to cause confusion. See *In re Digirad Corp.*, 45 USPQ2d 1841 (TTAB 1998); and *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993). Cf. *In re Code Consultants*, 60 USPQ2d 1699 (TTAB 2001).

**Decision:** The refusal to register under Section 2(d) of the Trademark Act is reversed.